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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)**

In re J.M., a Person Coming Under
the Juvenile Court Law.

C060658

SACRAMENTO COUNTY DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

(Super. Ct. No. JD22834)

Plaintiff and Respondent,

v.

V.C.,

Defendant and Appellant.

V.C., mother of nine-year-old minor J.M., appeals from the juvenile court's orders adjudging J.M. a dependent of the court and placing him in the supervised custody of his father. She contends insufficient evidence supports the orders and seeks the return of J.M. to her custody.¹ We shall affirm the orders of the juvenile court.

¹ As we shall explain, mother has not had physical custody of J.M. since 2005. She bases her claim on a temporary custody order she obtained in the family court, but the same day that order issued, J.M. was detained and these proceedings began.

FACTUAL AND PROCEDURAL BACKGROUND

When J.M. was born in July 2000, mother and J.M.'s father were together. However, mother moved to Indiana in 2005, leaving father as J.M.'s primary caretaker. Mother and J.M. spoke every month or two on the telephone, but she had visited him only a few times since her relocation, most recently in June 2008.

On July 24, 2008, father was sentenced to 210 days in jail for possessing a controlled substance for purposes of sale. By arrangement with father's sister, J.M. stayed with his paternal aunt and her five-year-old child.

Mother, in the late stage of pregnancy, flew to California against medical advice to take custody of J.M. On September 18, 2008, she went to pick him up at school, but school officials contacted the police because they were told that "mother had not seen the child in four years, the child did not want to go with [mother], and the child stated he did not know [mother]."

Mother went to Sacramento County Superior Court, obtained a temporary custody order, and returned to the school. However, by then the paternal aunt, listed in the school's records as J.M.'s guardian, was there. Unaware of mother's custody order, the police took J.M. into protective custody.

J.M. told the social worker for the Sacramento County Department of Health and Human Services (the Department) that he did not want to go with mother. He told the police officer he

had not seen her for four years or lived with her since she left California.

On September 19, 2008, the paternal aunt told the social worker she had just applied for legal guardianship of J.M. The social worker then obtained a copy of mother's temporary custody order and a further court order that J.M. remain in California until October 7, 2008, when a permanent custody hearing was scheduled.² Finally, the social worker obtained a signed agreement from mother (currently homeless, due to give birth any day, and planning to enter a shelter) for J.M. to be in a voluntary placement until the custody hearing.

In September 2008, mother gave birth to B.Z. Mother had tested positive for marijuana two days before, but B.Z. tested negative for marijuana at birth. Mother said she had used marijuana since she was 10 years old, most recently four months ago; she denied other drug use. Hospital staff told the Department that marijuana can remain in the system for three months.

Within two days of B.Z.'s birth, hospital staff notified the Department that mother was generally uncooperative and was

² This hearing and all other family court and mediation dates were subsequently vacated due to the pending juvenile court proceedings. On October 7, 2008, the family court dropped the hearing on its order to show cause re: child custody. On October 28, 2008, the family court dropped mediation on the order to show cause, stating that the juvenile court had taken over jurisdiction as of October 14, 2008.

not caring appropriately for the infant or bonding with her. She did not hold the infant, fed her only when prompted by nurses, and had let her sit in soiled diapers, causing skin irritation. Her participation in providing care for the infant had progressively deteriorated in the two days since birth.

On September 24, 2008, the Department filed a petition as to J.M. under Welfare and Institutions Code section 300, subdivision (b),³ and an application for a protective custody warrant.⁴ The petition and application alleged mother's substance abuse problem and failure to care for or bond with B.Z. (who had already been taken into protective custody), along with J.M.'s unwillingness to live with mother, as facts in support.

The detention report, filed September 29, 2008, stated that the paternal aunt was interested in placement, but mother claimed the aunt engaged in illegal drug activities at her home.

On September 29, 2008, the juvenile court ordered J.M. detained, with reunification services to be offered to the parents, and set a prejurisdictional status conference on October 22, 2008 (continued on that date to October 29, 2008).

³ Undesignated statutory references are to the Welfare and Institutions Code.

⁴ The Department also filed a section 300 petition as to B.Z., which was later dismissed for reasons we explain below.

The Jurisdiction/Disposition Report

The jurisdiction/disposition report recommended sustaining the jurisdictional petitions, but requested a short continuance as to disposition: Father had not yet been interviewed, and mother had to return to Indiana soon to resume caring for a half sibling and "to resolve her issues with the [Indiana] Probation Department."

Mother claimed she had come to California in November 2007 to take J.M. because she was concerned about father's drug use and sales, but an argument with father ensued and he hit her in the face.⁵ After learning she could not take J.M. without a family court order, she returned to Indiana in December 2007. She did not learn father's and J.M.'s whereabouts after that until April 2008. She then came out in May 2008 and stayed for two weeks.

Since J.M. was detained, mother had had four negative drug tests. She had been entirely cooperative and candid with the Department.

Mother was currently unemployed and supported by her sister, and had not obtained her GED. She had smoked marijuana every day until July 2008 and did not believe it was a problem, even though she was not doing it now. She last used alcohol in May 2007, when she attempted suicide.

⁵ In February 2006, mother came to California and took an older sibling of J.M. back to Indiana with her. In the summer of 2006 the sibling accidentally drowned. Depressed, mother temporarily abandoned her plan to reclaim J.M.

Mother had been visiting the children regularly, with no reported problems. J.M. had requested visitation with his paternal aunt and cousin.

The Elkhart (Indiana) Department of Children's Services reported that J.M.'s two-year-old half sibling lived there with maternal relatives. Indiana has an informal adjustment program to provide services for parents against whom there is a substantiated allegation of abuse or neglect, but it would not do so based only on an allegation in another jurisdiction. However, mother might be able to access services through the probation department.

The Elkhart Probation Department reported that mother had been on probation since April 2008 for battery and disorderly conduct. She had not checked in with the department, which was in the process of filing a warrant on her. She also had new charges of "criminal mischief," with a court date scheduled for November 10, 2008. If she did not check in with probation by December 2, 2008, its warrant would issue and she would be facing approximately three years in jail.⁶

Father was convicted of felony possession or purchase of cocaine base for sale on September 26, 2008. He was incarcerated at Rio Consumnes Correctional Center, with a projected release date of December 8, 2008.

⁶ According to mother, her Indiana probation ran until April 2009, with conditions that included paying fines and completing an anger management course.

J.M. liked his current foster home placement. He knew father was incarcerated, but did not know why. He had not lived with mother for four years, since she "left and went somewhere." He felt safest living with his father and aunt.

The Addendum Report

After interviewing father, the social worker filed an addendum report which recommended dismissing the section 300 petition as to B.Z. without prejudice and releasing B.Z. back to mother; removing J.M. from the parents' physical custody; ordering frequent phone visitation with J.M. for mother and regular visitation for father after his release from custody; continuing to assess the paternal aunt for placement; and ordering regular visitation for her until the assessment was completed.

Father wanted J.M. placed first with the paternal aunt and eventually with him. He had been J.M.'s primary caretaker since mother left in 2005. Father claimed he had never abused or neglected J.M.

Father described the death of the sibling who drowned after mother took her back to Indiana as "a careless incident" which happened with many adults nearby. According to him, the 2007 domestic violence incident resulted from an argument with mother about the cause of the child's death. He did not think mother would hurt J.M., however.

The Prejurisdictional Status Conference

On October 29, 2008, the juvenile court dismissed the section 300 petition as to B.Z. in the interest of justice because mother had to return to Indiana and had agreed to seek informal services there. The court also granted father's request for supervised phone or letter contact with J.M. prior to release from custody.

The Contested Jurisdictional/Dispositional Hearing

On December 5, 2008, the juvenile court held the contested jurisdictional/dispositional hearing.

1. Jurisdiction.

Father (who expected to be freed in a few days) testified that he saw mother smoke marijuana on June 5, 2008, during a visit to California. Before then, mother had last seen J.M. in November 2007; the last time before that was in July 2006, when J.M. (and his father) went to Michigan for his sister's funeral. Father denied using drugs, but admitted that when arrested in February 2008 he had marijuana on his person; he could not recall why. J.M.'s aunt, with whom J.M. had been staying, lived a block and a half from where father was arrested.

Both parents moved to dismiss the section 300 petition as to J.M. for insufficient evidence, arguing that the juvenile court had already found the same evidence insufficient as to B.Z. The court denied the motion and found that J.M. was within the court's jurisdiction, reasoning: (1) J.M. and B.Z. were not similarly situated; (2) mother had a long history of substance abuse, including her recent positive marijuana test; (3) mother

had not consistently been a custodial parent to J.M. and J.M. did not want to be with her; (4) both mother and the paternal aunt had tried to pick J.M. up from school; (5) mother's criminal issues in Indiana were still unresolved; (6) the prior death of J.M.'s older sibling while in mother's custody was still creating problems for both parents; (7) father was still incarcerated, and he denied selling drugs, even after conviction for that offense; and (8) the parents had a significant history of Child Protective Services (CPS) referrals dating back to 2005.

2. Disposition.

Father testified that he did not currently have a source of income or a place to live. He intended to move in with his ex-boss, a barber in his neighborhood, until he found a place where he could accommodate J.M., and to resume his former employment as a barber. (The barber shop was five blocks from the site of his arrest for drug sales.) In the meantime, he wanted J.M. to stay with the paternal aunt; she agreed with that plan. He did not know why she had not come forward for placement, but she had told him CPS had not gotten back in touch with her. Father would not be staying with her because he wanted his own place.

He admitted that when arrested he had 7.13 grams of rock cocaine in his sock and that he had had prior drug incidents, but continued to deny drug dealing: "I just got cut [sic] up in some unfortunate predicament." J.M. had never been with him

when he was handling drugs. He did not intend to go back to that activity.

Social worker Lindsey Hoffman testified that the Department's Kinship Unit had closed its evaluation of the paternal aunt because she did not follow through with a full criminal background check or contact the Department. J.M. had spoken to her on the telephone, but she had not initiated contact with him.

Mother testified that she lived in Indiana in a three-bedroom apartment with her sister, her sister's four children (ranging from 5 to 14 years old), and her own two children (a one year old and a two month old, respectively). She wanted the juvenile court to send J.M. home with her.

She had last been with J.M. on September 12 and 13, 2008, when she spent the night at the paternal aunt's house; he recognized mother and called her "momma." When she visited in June 2008, she had hung out for a week and a half, seeing J.M. every day. In between, she had spoken to him on the telephone when she could, but father often claimed J.M. was unavailable; there had been no telephone contact between July and September 2008. She had also visited J.M. in California several times in 2006 and 2007.

She had room for J.M. in her residence in Indiana, where her family already helped her with her other children. She was presently finishing her studies to become a certified nurse's

assistant, with a job lined up to do full-time in-home care starting at \$9.50 an hour.

Mother believed J.M. wanted to live with her because he had said so every time she came to California, but father never let him come. Father would not even let her be alone with J.M., supposedly for fear she would run off with J.M. He had not refused to go with her the day she came to his school; he never even saw her before his aunt took him. It was the aunt who told the authorities that mother had not seen J.M. in four years.

Mother had called CPS several times about J.M.'s safety because father sells drugs and lives in a dangerous area. In November 2007 and June 2008, she had seen father selling crack cocaine while J.M. was present, but when she reported this to CPS they said it was "just accusations."

Mother could accept J.M. being placed with the paternal aunt if necessary, because he did not want to be in the foster home. Mother had not seen the aunt use or sell drugs.

J.M. testified that he wanted to live with father, but if he could not do that, then he wanted to live with mother.

The Department, supported by J.M.'s counsel, requested out-of-home placement with services to both parents. The parents opposed out-of-home placement, each requesting sole custody over J.M.

The juvenile court ordered that J.M. be returned to father's custody, residing with the paternal aunt until father

was released from jail. The court awarded visitation to mother, but noted that services would have to be provided to her in Indiana.⁷

DISCUSSION

I

Mother contends there is insufficient evidence to support the juvenile court's jurisdictional finding. We disagree.

We review a challenge to the sufficiency of the evidence to support a jurisdictional finding under the substantial evidence standard, resolving all evidentiary disputes in favor of the court's rulings and drawing all reasonable inferences to support them. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450-451.)

Construed most favorably to the court's finding, the evidence showed that both parents had failed to protect J.M., and placing him in mother's custody would have put him at substantial risk of physical harm, abuse, or neglect. Mother has a long history of substance abuse, saw no problem with using marijuana daily even after becoming pregnant, and tested positive two days before B.Z.'s birth. The court could

⁷ In this court, the Department requested judicial notice that on June 3, 2009, the juvenile court granted father's section 388 petition for sole physical and legal custody of J.M., with supervised visitation for mother. We granted the request.

Based on this evidence, the Department moved to dismiss mother's appeal as moot. We denied the motion because the juvenile court's findings and orders could affect rulings in any later family court proceedings. (See *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548.)

reasonably infer that mother's habit and her nonchalant attitude toward it might jeopardize J.M.'s safety. A few negative drug tests after the children were detained, with no treatment program yet under way, were not enough to dispel this concern. And even aside from mother's drug habit, her recent history did not inspire confidence that she could properly care for another child: Within the last two years, she was convicted of criminal charges and incurred new ones, flouted her probation conditions, impulsively flew halfway across the country against medical advice in the late stages of pregnancy, and failed to obtain employment or a residence of her own for herself and the siblings of J.M. who already lived with her. (Though she claimed she was about to start working and her family would gladly accommodate yet another child in already tight quarters, these claims were unsubstantiated.) Thus, the court's jurisdictional finding was amply supported.

Mother asserts: "[T]he facts indicated . . . only casual and infrequent marijuana use by [mother]." This is simply not true.

Mother cites the dismissal of the section 300 petition as to B.Z. as proof that mother's drug use could not put a child in her custody at risk. However, the court did not find that petition's allegations untrue or unproven: It dismissed the petition "in the interest of justice" only because mother needed to deal with her legal problems in Indiana and had agreed to seek services there.

Finally, mother relies on *In re Rocco M.* (1991) 1 Cal.App.4th 814 (*Rocco M.*) and *In re David M.* (2005) 134 Cal.App.4th 822 (*David M.*), to support her claim that circumstances at the time of the hearing did not substantiate the jurisdictional finding. (Cf. *Rocco M.*, *supra*, 1 Cal.App.4th at p. 824.) Her reliance is misplaced.

In *Rocco M.*, the court upheld a jurisdictional finding under section 300, subdivision (b), because the mother's drug habit would have put the child "in an environment allowing access to drugs, with nothing to prevent him from succumbing to the temptation to ingest them." (*Rocco M.*, *supra*, 1 Cal.App.4th at p. 825.) Here, though mother claimed she no longer used marijuana, she had previously admitted--and defended--a daily habit going back many years. Thus, the juvenile court could reasonably have doubted whether she could maintain her resolve to avoid drugs, and could reasonably have feared that if given custody of J.M. she might resume drug use under conditions that would make drugs accessible to him with no incentive to resist temptation. (*Rocco M.*, at p. 825.)

In *David M.*, the court reversed a jurisdictional finding based on the mother's drug use because the evidence was stale and the department had done no follow-up investigation. (*David M.*, *supra*, 134 Cal.App.4th at p. 831.) Here, mother's admitted drug use continued until shortly before the birth of B.Z. and the detention of both children.

Substantial evidence supports the juvenile court's jurisdictional finding.

II

Mother contends the juvenile court's dispositional findings and orders must be reversed and J.M. "returned" to her custody. She bases this contention on two grounds: (1) J.M. is not a person described by section 300, and (2) the family court's temporary custody order made her the custodial parent at the time when he was removed into foster care. We are not persuaded.

We have explained already why mother's first point fails. And, because the temporary custody order (obtained in the first place without notice to father) was no longer in effect by the time of the jurisdictional/dispositional hearing and the family court had properly ceded jurisdiction to the juvenile court, mother's second point also fails.⁸

⁸ Mother's reply brief, filed after this court granted judicial notice of the family court's orders dropping its proceedings and acknowledging the juvenile court's assumption of jurisdiction, does not discuss the temporary custody order. We therefore conclude that mother has abandoned her reliance on this order.

DISPOSITION

The judgment (jurisdictional and dispositional orders) is affirmed.

_____, BUTZ, J.

We concur:

_____, HULL, Acting P. J.

_____, ROBIE, J.